Before the

FEDERAL COMMUNICATION COMMISSION

MAY 19, 1997
WASHINGTON, DC

Petition for Reconsideration and Comments of

AMERICAN TRUCKING ASSOCIATIONS, INC.

On

PRIVATE LAND MOBILE RADIO SERVICES

(47 CFR Parts 1, 20, 74, 90 and 101)

PR Docket No. 92-235; FCC 97-61

Fed. Reg./Vol. 62, No. 74/April 17, 1997, Pg. 18834

FOREWORD

The American Trucking Associations (ATA), Inc., located at 2200 Mill Road, Alexandria, Virginia 22314, is a federation with affiliated associations in every state and the District of Columbia. In the aggregate, ATA represents every type and class of motor carrier in the country, for-hire and private. As the national representative of the trucking industry, ATA is vitally interested in any regulation affecting the operation of equipment utilized in the nation's trucking fleet.

ATA's petition for reconsideration herein to Federal Communications Commission Docket [PR Docket No. 92-235; FCC 97-61] Private Land Mobile Radio Services (47 CFR Parts 1, 20, 74, 90, and 101); from the April 17, 1997 Federal Register page 18834, was prepared by the staff of ATA's Engineering Department. For many years the Department has developed ATA's major position papers, docket submissions, and testimony relating to trucking equipment design, maintenance and use.

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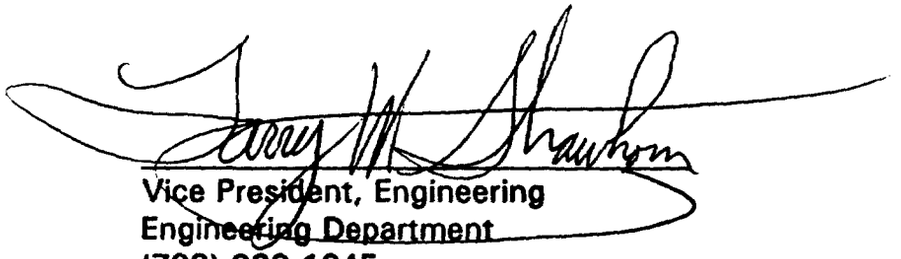

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INTRODUCTION

The American Trucking Associations (ATA) takes this opportunity to seek reconsideration of FCC PR Docket No. 92-235; FCC 97-61; published April 17, 1997 starting on Federal Register page 18834.

These comments will address the FCC final rule regarding the new 47 CFR Part 90 concerning frequency coordination for the industrial/business related portion of the private land mobile radio spectrum.

PREFACE & GENERAL DISCUSSION

Surprise is sometimes a consequence of regulatory changes. Regulation of cable TV was to bring many advantages which have not materialized. This was because business reacted differently than expected to the fresh opportunity. Prudence dictated that new offerings be made with careful attention to risk, and that completely changed the course ultimately taken by those involved from what initially had been expected of them. A similar reaction is likely to occur with private land mobile radio frequency coordination and use.

We define what the Commission is requiring in the new Part 90 for the "Industrial/Business" related portion of the private land mobile radio spectrum as an open entry open pool system. It is a plan where there are no longer exclusive coordinators for each service in the spectrum and any entity eligible for one frequency in the pool is eligible for them all.

If the present coordinators lose primary control of their portion of the involved spectrum, they will conduct business in a manner quite different from that of the past. Some will leave, others will consolidate to some degree, and all will operate differently.

The result to the customer and public is likely to be much different than the Commission presently predicts. While spectrum may be more widely allocated, it could become much less useable because of greatly increased interference. Handling a higher number of disputes will take more coordinator time. This will lead to increasing prices and a decrease in efficient spectrum use.

Cost increases will be generated by both the shrinking number of coordinators and the increased staff time necessary for dispute resolution. Spectrum use will be less efficient because interference will greatly reduce the utility of radio systems. Some users will be left to cope because they either have made a significant investment in equipment which they must try to recoup or they cannot afford the cost and expense of switching to more expensive alternatives, i.e. satellite. Others will cease using communications systems to the detriment of safety and efficiency. And still others will turn to different means of communications and push crowding to other areas.

ATA believes most of the problems just predicted can be avoided if the Commission reconsiders its new part 90 and rewrites it so both Public Safety and private Industrial/Business coordinators are allowed to work by the same rules.

ISSUE DISCUSSION

o **Issue 1. Why Coordinators?** A basic issue which must be studied seriously by the Commission in making this reconsideration is why frequency coordination exists.

Discussion. After Congress granted the Commission permission to do so in the 1982 amendments to the Communications Act, it established rules and procedures for frequency coordination and coordinators in PR Docket 83-737 and announced them through report DC-450 dated April 3, 1986. That document states the Commission's primary objectives "... were to improve the quality of frequency selections, expedite licensing, and improve spectrum efficiency. In order to achieve these objectives, the Commission said that certified frequency coordinators will be required to: Provide coordination services on a non-discriminatory basis, review the Form 574 application for completeness and review items 1-25 for general correctness, process applications in order of receipt, file coordinated applications with the Commission, handle post-licensing conflicts involving frequency selection, respond to coordination requests and applications in a timely manner, recommend the most appropriate frequency, handle interservice sharing requests, maintain reasonable and uniform fees, establish a single point of contact nationally, and facilitate the use of new technologies."

"Additionally, the Commission concluded that *the designation of a single coordinator for each radio service would substantially simplify the coordination process and would result in more reliable frequency recommendations. (italics added)*"

Because these responsibilities are handled by the frequency coordinators, the Commission has activated no mechanism of its own to research frequency use and assign a channel to the user applicant. The burden and responsibility for this work has been delegated to the coordinators.

An important reason for this delegation is that the coordinators have an intimate understanding of the needs of those using the channels which they serve. Today one can create a computer program to check all applications for compliance with a well defined set of legal and technical ground rules. Indeed this is being done and is one test of whether a coordination should be made. Were this all that is necessary, the Commission could do the job itself, using clerks.

However, more than can be captured in computer software is necessary for successful coordination. An understanding of the business of those applicants seeking coordinations is necessary. One needs to know, based on knowledge of the operator or operation, when something just doesn't "feel right" either in terms of equipment or operationally. We know, for example that the requirements for motor carrier radio operations result from the scope and mobility of pick-up and delivery operations. We also know who competitors are and that we should keep them from the same channels, and what types of operations can successfully share channels. Further, we have an understanding of the type of equipment the different types of carriers operate and use such knowledge to help assess whether the application is appropriate.

Having been in the business for many years, we are very familiar with the unique needs of those using the frequencies which we have been coordinating. ATA became the coordinator of the Motor Carrier Radio Service in 1956. Our interest goes back to 1946 when we worked through a corporation known as Highway Radio, Inc. to explore the possible uses of two-way radio by trucking firms. Our expertise in this area has been honed for 51 years.

It is experience like ours, which each coordinator has amassed in its unique niche, that the Commission has relied upon to achieve its objective of the most efficient use of the spectrum. It is also this experience and the good it brings to coordination that will be lost if any coordinator is free to initially handle any frequency in the Industrial/Business pool.

The new procedures for the Public Safety pool assure that those most knowledgeable of the various frequencies are those who are initially responsible for their allocation. This guarantees that the spectrum will receive the most insightful management. Along with assuring that the coordinator has information necessary to make the best coordination, to be discussed further in Issue 2, this also helps assure:

- Applicants will receive better quality frequency coordinations because they will be directed to use the coordination service which is the most likely to make a recommendation having minimum interference, and

- The burden on the Commission will be decreased as there will be fewer complaints for it to investigate and resolve.

Recommendation. The Commission now uses frequency coordinators who, alone, manage their portion of the spectrum. These coordinators get first cut at channels in their frequencies. This enables them to preclude possible interference because they must see each proposed assignment. Using their unique knowledge of those who use their portion of the spectrum and the ability to control who enters where, interference is minimized. Such control will be lost when all are given open entry. Going to an open entry open pool will eliminate the existing protection of the various service users and lead to greater interference and loss of utility of the spectrum. We recommend that frequency requests in the Industrial/Business pool be initially solely dealt with by the coordinator most familiar with them, as is the case in the Public Safety pool.

o **Issue 2. Fairness and Equality.** The new regulations impose the same responsibilities on all frequency coordinators but do not afford them equal treatment.

Discussion. Under the newly imposed regulations, frequency coordinators in the new Public Safety open pool are treated differently from those in the open Industrial/Business pool. While this unequal treatment exists in the area of coordinator authority, all have equal responsibilities and are held accountable in the same manner. This is unequal and unfair treatment.

Coordinators of frequencies in the new open entry Industrial/Business pool are expected to handle requests relating to any frequencies in the pool and any entity eligible for one is considered eligible for all. The open pool, across-the-board eligibility concept prevails for Public Safety too. However, those desiring coordination must initiate their request through the coordinator most knowledgeable about the pertinent spectrum, so the Public Safety pool is not open entry.

The process selected for the Public Safety pool is the most desirable and should be afforded all coordinators. By leaving responsibility for individual frequencies with the present individual service coordinators the Commission has assured that:

- The coordination service making a recommendation is very familiar with the spectrum in question, thereby assuring that it is best qualified for the task.

Without the benefits afforded by intimate knowledge of their portion of the spectrum, it is quite likely that coordinators required to be all things to all comers will make serious mistakes leading to increased interference.

Recommendation. Because all frequency coordinators are to be judged the same and held to the same standards, it is imperative that they work from the same rules. Therefore, ATA recommends that the Commission revise its new regulations to grant fair and equal treatment. This should be accomplished by requiring

Industrial/Business pool applicants to go, either directly or via interservice sharing, to the coordinator previously (prior to this order) charged with managing the applicable service frequencies.

o **Issue 3. Flaws In The Open Entry Open Pool Concept.** There are some obvious flaws in the open entry open pool concept which the Commission has already been forced to begin to address.

Discussion. Special exemptions to the open entry open pool concept for the Industrial/Business frequencies have already been granted. Pipelines, petroleum and railroads have been given special consideration because of some of their unique operations.

ATA does not object to these exemptions. We agree that they are necessary to preserve safe operations. We also believe they foreshadow more exemptions which ultimately will be required. Once the unique understanding and knowledge of each of the existing coordinators is subverted in the name of the open entry open pool, coordination mistakes in other areas are going to be made which unwittingly create problems as serious as those recognized by the variances already granted.

Transit bus operators have many types of emergencies which are effectively dealt with via their radio. We can envision a bus channel, crowded with new users from other services, that can not be used to make a timely call for help for a passenger having a heart attack or other life threatening problem. Likewise an armored car in a busy part of town may get into very serious trouble with armed robbers and be unable to signal its plight, a situation which could lead to injury of both its occupants and innocent citizens caught in the line of fire. Further, a delivery truck with a load of hazardous materials suffering an accident or the unexpected breech of a package could cause a major incident before help could be summoned.

We understand such things because we have dealt with these types of carriers for years. A coordinator new to the channels we now manage will lack this knowledge and may inadvertently make a coordination which meets all the technical and legal requirements but creates the possibility of a life threatening situation. Likewise we might make the same mistake coordinating a frequency presently in other than the motor carrier service spectrum.

Recommendation. It is imperative that those who best know the radio services they coordinate be allowed to continue to have primary responsibility for them. Opening the gates to let those unfamiliar with the services coordinate them will lead to exemptions and complications, a trend already started with petroleum, pipelines and the railroads.

o **Issue 4. Consumer Interest And Efficient Spectrum Use.** While we oppose making the Industrial/Business pool an open entry open pool, we do favor changes in the way frequencies are assigned for private land mobile radio uses.

Discussion. ATA envisions a new coordination method for the private land mobile frequencies which promotes better utilization of the spectrum without greatly increasing the risk that over-use and poor allocations will create interference to the point of chaos.

We support one pool placement of all the frequencies allocated to other than the Public Safety services in the private land mobile network; provided, the individual service coordinators retain first and primary responsibility for making coordinations relating to their portions of the subject spectrum.

This will make anyone eligible for any of the frequencies in the network eligible for them all. What we favor is the same process as has been spelled out for the Public Safety pool of the private land mobile services.

By making anyone eligible for one of the Industrial/Business pool frequencies eligible for all, the Commission will take a significant step to assure that the entire spectrum is efficiently used. The revisions we envision will require that those interested in any particular channel start their quest for a license with the coordinator of that portion of the spectrum. They will have the opportunity to make that selection based on where they seek to initiate their quest, instead of where the rules of eligibility now direct them. Should the coordinator they select not have an appropriate channel, they will still be better off than today because that firm will have access to the status of the complete frequency pool and will be able to make a quicker judgement about where to turn to seek the needed sharing.

There is no doubt that the whole pattern of radio communications use is changing. There are already many of those eligible for licenses on private land mobile radio who get their service from other providers. The congestion of the traditional VHF and UHF frequencies used by motor carriers in many areas has caused truck and bus operators to move to digital and/or trunked services in the 800 and 900 MHz bands.

There is also a growing need for services beyond the two-way voice communications that traditionally have been handled on the private land mobile motor carrier service frequencies. Messaging, paging, mobile-fax, mobile data, package and vehicle tracing, and vehicle activated messaging are all things that are now in growing use which were not envisioned 51 years ago when ATA started investigating radio use for trucking. For the most part these services require that the communication be clear, private, flexible, and include integrated features (like two-way voice and paging). Such needs are difficult to meet with the common VHF and UHF systems.

Those seeking services provided by radio in its many forms need more than just a frequency coordination. They need guidance on what forms of radio are best for them. Radio supply services must provide one stop shopping to best serve their customers. Doing this requires that the resources they turn to have a complete understanding of their own business. Again, the changing demands of these times require that those coordinating frequencies have a thorough understanding of every nuance of the use of their channels.

Recommendation. The use of radio is changing and ATA certainly agrees with regulatory changes to keep pace with the times. We believe the Commission has done the right thing for those coordinators in the Public Safety pool of private land mobile radio and we seek similar treatment for the coordinators in the Industrial/Business pool of the same spectrum.